

## **REMARKS**

### **I. Summary of the Office Action**

The Final Office Action mailed September 19, 2008 ("the Office Action") made the following objections and/or rejections, each of which is addressed in more detail below:

Claims 17-25 and 32 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,177,833 ("Marynowski") in view of U.S. Patent No. 7,110,947 ("Rust").

### **II. Interview Summary**

The Applicant thanks the Examiner for the telephonic interview on September 20, 2008 ("the Interview") with the Applicant's representative Adam Faier. The Applicant appreciates the Examiner's time in discussing the present application, pending claims, current rejections, and the cited art. Additional details about certain topics discussed in the Interview are included below. Based on that discussion, the Applicant is submitting the present Response and RCE in hopes of furthering prosecution.

### **III. Related Applications**

The Applicant understands that the Examiner reviews the claims and prosecution history of related applications as they contain common subject matter. To this end, the Applicant reminds the Examiner that the present application is related through a common claim of priority to U.S. Patent Application Serial Nos. 10/137,979, 11/417,870, 11/417,915, 11/417,533, and 12/164,859. In addition, the Applicant reminds the Examiner that, as discussed in the Interview, U.S. Patent Application Serial No. 11/417,870 is a continuation of the present application and is pending before a different Examiner (Harish T. Dass) and in a different art unit (3692).

In addition, for the purposes of the present application, the Applicant hereby rescinds any disclaimer of claim scope that may have been (or may be) made during the prosecution of any related application. The Applicant respectfully requests examination of the instant claims according to the claim language in light of the prior art without importing statements made by the Applicant in the prosecution of any related application.

#### IV. Status of the Claims

The present application includes claims 17-25 and 32. By this Response, claims 17 and 32 have been amended. Support for these amendments can be found throughout the application, and therefore no new matter is added in this response.

#### V. Claim Rejections – 35 U.S.C. 103

The Applicant now turns to the rejection of claims 17-25 and 32 under 35 U.S.C. 103(a) as being unpatentable over Marynowski in view of Rust. The Applicant respectfully submits that neither Marynowski nor Rust, alone or in combination, teaches or suggests the entirety of the features recited in the pending claims for at least the reasons discussed below.

As discussed in the Interview, the pending claims are generally directed towards estimating a value for a spread between at least a first and second tradeable object. As explained in the present application beginning at page 3, spread trading is the buying and/or selling of two or more tradeable objects, typically for the purpose of capitalizing on changes or movements in the relationships between the tradeable objects. Thus, a spread based on the two or more tradeable objects can be traded as a tradeable object itself. A spread may be “synthetic,” as discussed at page 2, line 20 – page 3, line 2. That is, the spread itself is not being traded as a product at the exchange. Instead, the tradeable objects of the spread are traded at the exchange. Thus, a synthetic spread could be traded using an automated spread trading tool which handles placing orders for the underlying tradeable objects of the spread at an exchange to achieve the desired spread trades.

The tradeable objects of a spread may be traded at the exchange separately from trades of the spread itself. That is, one or more of the tradeable objects of the spread may be traded independently from the spread relationship at the exchange. As a result, as explained beginning at page 4, line 20, a trader trading the synthetic spread may desire to know the last traded price (“LTP”) for the spread. The LTP for the spread is the “spread value” and represents a price at which a trader might have been able to buy or sell the spread. However, since the spread may not actually have been traded (for example, one of the tradeable objects of the spread may have been bought or sold independent from the spread relationship), the LTP for the synthetic spread is estimated. Conventional techniques for estimating the LTP of the spread have various

drawbacks, as explained on pages 5-6. The pending claims are directed towards a new technique for estimating the spread value.

Marynowski generally relates to an automated trading system that rapidly responds to desirable trading opportunities, as discussed at col. 1, lines 7-11. As illustrated in Figure 3 and discussed beginning at col. 7, line 7, the automated trading system of Marynowski generates and automatically submits response, such as orders or quotes, to an exchange based on market data received from the exchange or other sources. The system may perform this function by calculating a theoretical value for the traded item in real time when one or more of the underlying factors that affect the theoretical value changes. The calculated theoretical value is then used to determine whether an order or quote should be submitted based upon existing market prices for the traded item.

Marynowski discusses several ways that the market price of the underlying security may be defined beginning at col. 9, line 18, including: (1) bid prices and quantities, (2) ask prices and quantities, (3) last price and volume at which the underlying security was traded (last price), (4) an average of the current highest bid and lowest offer prices (average best bid, best ask price), and (5) an average price of a certain depth. A trader may select one of these techniques, or a permutation of them, to use in the models for determining the theoretical prices.

However, Marynowski does not teach or suggest characterizing a first tradeable object as being bought or sold and then selecting a buy side or sell side of a second tradeable object based on this characterization. Rather, as discussed above, Marynowski lets a trader select from a variety of available pieces of information to use in a model for determining theoretical prices. Marynowski makes no mention of characterizing a tradeable object as having been bought or sold.

In addition, the Office Action states at page 3 that “Marynowski does not specifically teach estimating a spread value for the spread based on a first value associated with the event in the first tradeable object and based on a second value associated with the selected buy side or sell side of the second tradeable object.” The Applicant agrees. The Office Action then contends that Rust teaches this feature. The Applicant respectfully disagrees.

Rust has been previously discussed, but for completeness that discussion will be repeated here. Rust generally relates estimating the cost of trading to make better informed decisions regarding whether and what to trade, as noted at col. 1, lines 7-14. As explained beginning at

col. 1, line 31, one of the costs associated with trading includes execution costs. Execution costs can be understood as a combination of spread cost and size impact costs, both of which must be evaluated to estimate execution costs.

Rust provides more detail of spread costs beginning at col. 1, line 41, which states that spread costs reflect the cost per share of executing a small order. If one always bought on the offer and sold on the bid, the spread cost would be half the bid-ask spread. A detailed explanation of the average bid-ask spread is provided beginning at col. 5, line 43 which provides an equation (Equation 2) for computing the average bid-ask spread. As is made clear in the discussion of Equation 1 (which begins at col. 4, line 59), the average bid-ask spread (variable “e” in Equation 1) is for a single stock.

Thus, the Applicant respectfully submits that the term “spread,” as used in Rust, is a completely different concept than the spread referred to in the pending claims. As discussed above, the spread of Rust is a “bid-ask spread” for a single stock and represents the difference between the lowest ask price and the highest bid price of that single stock. In contrast, the pending claims refer to a spread used in spread trading which includes at least two different tradeable objects. Consequently, the Applicant respectfully submits that because Rust contains no teaching or suggestion of a spread for spread trading as recited in the pending claims, Rust does not and cannot teach or suggest any of the features of the pending claims, much less the particular feature contented in the Office Action.

Further, Rust does not teach or suggest characterizing a first tradeable object as being bought or sold and then selecting a buy side or sell side of a second tradeable object based on this characterization. Rather, Rust makes no mention of characterizing a tradeable object as having been bought or sold.

Accordingly, without conceding the propriety of the asserted combination, the Applicant respectfully submits that, even in view of the knowledge of one of ordinary skill in the art, Rust cannot and does not cure the deficiencies of Marynowski discussed above.

Independent claim 17 has been amended to clarify that the spread referred to in the pending claims is for spread trading and is for a spread including at least two different tradeable objects. Amended independent claim 17 now recites “the first tradeable object and a second tradeable object are part of a spread for spread trading, wherein the first tradeable object and the second tradeable object are different.” In addition, amended independent claim 17 also recites

“estimating a spread value for the spread based on a first value associated with the event in the first tradeable object and based on a second value associated with the selected buy side or sell side of the second tradeable object.” Amended independent claim 32 recites similar features. For at least the reasons discussed above, neither Marynowski nor Rust, alone or in combination, teaches or suggests the entirety of the features recited in the pending claims. Therefore, the Applicant respectfully submits that independent claims 17 and 32 should be allowable over the cited art of record for at least the reasons discussed above.

With respect to claims 18-25, these claims depend from independent claim 17. The Applicant respectfully submits that at least because claim 17 should be allowed for the reasons discussed above, claims 18-25 should also be allowed.

#### VI. Conclusion

In general, the Office Action makes various statements regarding the pending claims and the cited art that are now moot in light of the above. Thus, the Applicant will not address such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (for example, if such statements should become relevant by appearing in a rejection of any current or future claim).

All the stated grounds of objection and rejection have been respectfully traversed, accommodated, or rendered moot. The Applicant therefore submits that the present application is in condition for allowance. If the Examiner believes that further dialog would expedite consideration of the application, the Examiner is invited to contact Trading Technologies in-house Patent Counsel Adam Faier at 312-698-6003, or the undersigned attorney or agent.

Respectfully submitted,

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